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PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

GARY TREMBLAY,)	CV 09-15-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY, et al.,)	
)	
Defendants.)	
)	

Plaintiff Tremblay, a state prisoner proceeding pro se, has filed a Complaint under 42 U.S.C. § 1983 alleging various constitutional violations, including excessive use of force, unlawful conditions of confinement, denial of mental health care, and improper use of a behavior management plan.

United States Magistrate Judge Keith Strong conducted preliminary

screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

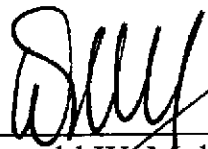
Judge Strong issued Findings and Recommendations in which he recommends dismissal of the Plaintiff's claims for denial of mental health care, improper use of a behavior management plan, and verbal harassment. Judge Strong also recommends dismissal of all claims as to Defendant Mahoney because he is not alleged to have played an affirmative role the deprivation of constitutional rights. Judge Strong allowed Plaintiff's other claims to move forward.

Plaintiff Tremblay did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 13) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that all claims against Defendants Thomas, Bouley, and Carroll based upon Plaintiff's placement on a behavior management plan; all claims for denial of mental health care against Defendants Buck, Praxell, and Scheafer; all claims for verbal harassment against Defendant Buck; and all claims against Defendant Mahoney are DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.

DATED this 30th day of December, 2009.



Donald W. Molloy, District Judge
United States District Court

